

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON, |) | |
| |) | No. 61109-7-I |
| Respondent, |) | |
| |) | DIVISION ONE |
| v. |) | |
| |) | UNPUBLISHED OPINION |
| TED ERNEST COXWELL, |) | |
| ADRIAN GREGORY DILLARD, and |) | |
| each of them, |) | |
| |) | |
| Defendants, |) | |
| |) | |
| PAUL RAYMOND RIMBEY, |) | |
| |) | |
| Appellant. |) | FILED: August 3, 2009 |

APPELWICK, J. – Rimbey appeals his conviction of theft in the first degree by color or aid of deception. He challenges the sufficiency of the evidence, contending that the State established only that he engaged in a sharp business dealing with the alleged victim, Grey. But, the jury could find that Rimbey had Grey sign documents affecting the title to Grey's new truck, which Grey, a paranoid schizophrenic hospitalized in a mental facility, did not fully understand, and then later transferred the title to himself despite having led Grey to believe he would not. We find no error and accordingly affirm.

FACTS

On July 21, 2006, Richard Grey went to the Huling Brothers car dealership. Grey, an unmedicated paranoid schizophrenic in his sixties, was wearing obviously soiled pants and spoke strangely. No one initially waited on

Grey, because of his appearance. But, when Grey displayed \$30,000 in cash in a grocery bag, salesman Jim Cowan sold him a new GMC Canyon truck for \$29,420.82. That amount included the full sticker price and credit insurance that was unnecessary, because Grey paid cash. Cowan told other Huling employees that Grey claimed to have \$75,000 more in cash in his apartment.

The next day, Cowan's sale and Grey's cash hoard were widely discussed at Huling Brothers. Grey returned that afternoon when his truck was impounded after he hit a tree. As Cowan took Grey to redeem the truck, three different sets of Huling salesmen went to Grey's apartment to steal his cash. One group succeeded, taking Grey's remaining life savings of approximately \$75,000.

On July 25, Grey's truck was impounded again, this time by ABC Towing. Grey again retrieved it. The ABC employee that waited on Grey said he needed extra help, because he appeared to be "kind of special."

On July 27, Grey reported to police that his truck was stolen. The responding officer found Grey's apartment in an unsanitary state, and initiated Grey's commitment to the secure psychiatric ward at Harborview hospital.

On July 31, ABC Towing impounded Grey's truck again. The truck had been found abandoned, with the keys inside, blocking a residential driveway. ABC's letters to Grey were returned and an auction was scheduled for August 23. John Chase, the owner of ABC, called Huling Brothers to verify ownership. The salesman Chase spoke with and other potential buyers inquired about purchasing the truck, which, although damaged, still had been driven only

approximately 500 miles. When Chase learned that Grey was confined at Harborview, however, he pulled the truck from the auction.

Grey expressed concern about his truck to his Harborview social worker, Dan Baker. Baker located the truck and learned that ABC would release it to someone with a notarized statement from Grey authorizing them to take possession. Grey called Huling Brothers, again seeking help. He eventually reached Paul Rimbey, who worked as a salesman in the finance department. Grey believed Cowan assigned Rimbey to assist him.

At approximately that time, Rimbey and Huling employee Jared Kortman drove to Grey's apartment to see if there was any remaining cash, but recovered nothing. Learning that Grey was hospitalized, Rimbey, Kortman, and another Huling employee, Gabe Gallegos discussed the best way to acquire the truck. They considered but rejected buying it for a low price at auction, because they could be outbid. They also discussed getting Grey to relinquish ownership in a security agreement. Gallegos and Kortman ultimately declined, concerned with the legality and appearance of such a deal with a person in a mental hospital.

On August 28, Rimbey went to the secure ward at Harborview and told Grey he would help. He had Grey sign the authorization, that Baker had mentioned, to pay ABC the impound fees and take possession of the truck, as well as additional forms that Rimbey had prepared. Some of these, including a gift note and an odometer statement reciting that the truck had 1391 miles on it, released title immediately. Others established a security interest that passed

title if Grey failed to pay Rimbey the impound fees plus \$300 by September 28 or September 30. When the notary at Harborview refused to notarize one of the documents, Rimbey later took it to a friend at Huling who illegally notarized it for him. As Grey signed the paperwork, Rimbey assured Grey that he would give him an extension of time, if needed.

Grey was transferred to Western State Hospital for long-term treatment in September. On September 28, Grey escaped from Western State. He called Rimbey, concerned that the deadline was approaching and he still did not have money to pay Rimbey. Rimbey told him not to worry about the deadline. Grey called Rimbey again after September 30, and Rimbey again reassured him that he could have additional time to pay. Grey believed that Rimbey would store the truck for him until he was released from Western State.

Some time before October 13, Rimbey mailed the Department of Licensing (DOL) paperwork, including the gift note and the odometer statement, to register the truck in his own name. The DOL then transferred title to Rimbey.

On October 27, a State Patrol detective investigating other matters at Huling Brothers located the truck at Rimbey's house. The odometer showed 2,453 miles. That same day, Rimbey ended his employment with Huling Brothers and returned Grey's truck to the dealership. Huling Brothers reimbursed Grey for the purchase price of the truck and compensated him for the money taken in the burglary.

Rimbey was charged with theft in the first degree by color or aid of

deception and by wrongfully obtaining or exerting unauthorized control over the property of another. The State also alleged, as an aggravating factor, that Grey was a particularly vulnerable victim that Rimbey knew, or should have known, of his vulnerability and that the vulnerability was a substantial factor in the commission of the crime. By special verdict, the jury found Rimbey guilty by means of theft by deception and did not reach a verdict on the wrongful taking theory. The jury also found that the State had proved the aggravating factor beyond a reasonable doubt. Rimbey received an exceptional sentence of nine months of confinement.

Rimbey appeals.

ANALYSIS

Rimbey challenges the sufficiency of the evidence to support the finding that he committed theft by deception. He does not challenge the sufficiency of the evidence to support the aggravating factor of victim vulnerability.

The test for sufficiency is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found each essential element of the charge beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Id. A reviewing court neither weighs the evidence nor needs to be convinced that it established guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A trier of fact may properly render a guilty verdict

based on circumstantial evidence alone, even if the evidence is also consistent with the hypothesis of innocence. State v. Kovac, 50 Wn. App. 117, 119, 747 P.2d 484 (1987). A conviction will not be overturned unless there is no substantial evidence to support it. Lamborn v. Phillips Pac. Chem. Co., 89 Wn.2d 701, 709–10, 575 P.2d 215 (1978).

To find Rimbey guilty of theft in the first degree by means of deception, the jury had to be satisfied beyond a reasonable doubt that he (1) obtained unauthorized control over property exceeding \$1,500, (2) by color or aid of deception, (3) with intent to deprive the victim of the property. RCW 9A.56.020(1)(b); .030(1)(a). “By color or aid of deception’ means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services.” RCW 9A.56.010(4).¹

The State contends that Rimbey deceived Grey in at least three ways to obtain ownership or use of the truck. We agree that evidence supports each theory.

First, the jury could find the entire relationship between the two men was premised on Rimbey’s false representation that he was there to help Grey when his sole focus was actually to take possession of the truck. See State v. Mermis,

¹ RCW 9A.56.010(5) provides, in relevant part, that “Deception,” for purposes of the theft statutes, occurs when a defendant knowingly

(a) Creates or confirms another’s false impression which the actor knows to be false; or

(b) Fails to correct another’s impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved.

105 Wn. App. 738, 744, 20 P.3d 1044 (2001) (evidence that an “entire relationship was based on deception” showed the defendant obtained control of a car by deception).

Second, the evidence supports an inference that Rimbey falsely led Grey to believe that he would give him any extension he needed before transferring the title.

Third, even if the jury believed that Grey understood the essential nature of the security agreement, it still could have found Rimbey deceptively obtained a temporary taking. A taking need not be permanent to support a finding of guilt under the theft statute. State v. Komok, 113 Wn.2d 810, 816–17, 783 P.2d 1061 (1989). The evidence supported an inference that Rimbey falsified the mileage on the odometer statement so that he could drive the truck immediately on redeeming it from ABC, despite his written promise that he would only store it.

Rimbey, nonetheless, relies on Grey’s testimony during cross-examination, in which he affirmatively answered defense counsel’s leading questions about whether he understood that the documents he signed meant that Rimbey would keep the truck, at a very good profit, if Grey did not repay the impound money within 30 days. Rimbey contends that this shows there was no deception, because Grey fully understood every aspect of the arrangement by which title would transfer. Rimbey further argues that even if his acts amounted to deception the evidence was still insufficient, because the State failed to show how Grey relied on any of his deceptive statements. See State v. Casey, 81

Wn. App. 524, 527–28, 915 P.2d 587 (1996) (present formulation of theft by deception statute retains common law reliance element). We disagree with both contentions.

Notwithstanding Grey's agreeableness on cross-examination, the evidence supports an inference that he did not actually understand the essential nature of the written agreements. As the State notes, the forms Rimbey prepared were inconsistent among themselves about how or when title could transfer. Moreover, Grey repeatedly referred in his testimony to a supposedly material date of "September 31," recalled a monetary amount not reflected in any document, and could not accurately recall the timing of events.

In addition, the evidence about Grey's mental health strongly suggests Grey did not understand the forms he signed. Grey's guardian testified that even with the benefit of long-term treatment, medication, and supervision Grey still had a substantial impairment, including an inability to actually understand the concept of making a purchase. He did not understand what a bill was, how to pay one, or even the practical consequences of spending money.² She also testified that anyone speaking with Grey would recognize this impairment, including that he did not understand the concept of making a purchase.

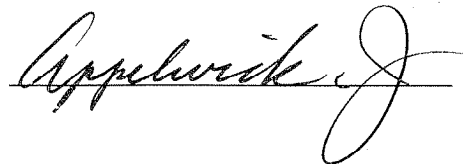
As for Rimbey's claim that the State failed to prove Grey's reliance on any of Rimbey's words or acts, the necessary reliance is established when the

² On cross-examination, Grey's guardian provided the example that if Grey were faced with choosing between two kinds of apples with a different price, he could express an understanding that the amounts were different, but still could not actually make a rational choice based on that difference.

deception “in some measure operated as inducement.” Casey, 81 Wn. App. at 529. It is not required that the deception be the sole means of inducing the victim to part with his property. State v. Zorich, 72 Wn.2d 31, 34, 431 P.2d 584 (1967). Rimbey fails to credit the circumstantial evidence that Grey had found other people to assist him when his truck had been impounded before. And Grey himself identified a cousin who lived near him as a person who might have been able to help him resolve the problem with his impounded truck when he was detained in Harborview. The jury could reasonably conclude that Grey relied on Rimbey’s deceptive representations about Rimbey’s intent, the availability of continuing extensions, and his false promise not to drive the vehicle, rather than attempting to obtain the assistance of another person whose primary motive would not have been to obtain the truck.

Taking all inferences in the light most favorable to the State, the evidence was sufficient to permit the jury to find that Rimbey obtained ownership and use of Grey’s truck by color or aid of deception.

Affirmed.

A handwritten signature in cursive script, reading "Appelwick J.", written over a horizontal line.

WE CONCUR:

Ajid, J.

Grosse, J